

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



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1884.

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CHAP. 78. actually travelled; but no commissioner shall have more than one travel during the same hearing or session, or for more than two adjournments of any regular term; nor for service or travel on more than one petition or case at the same time; nor anything for travel or attendance at the legislature connected with the annual county estimates; nor for any additional trouble or expense.

Accounts of services, how kept and settled; copy shall be published in newspaper, and returned to secretary of state. 1883, c.181, § 2.

SEC. 22. Each shall keep an accurate account of his time and travel, specifying the kind of service performed each day or part of a day, and the places from and to which he travelled each day, and he shall not be allowed for services not so specified. His account shall be audited and examined by the county attorney and clerk, to the truth of which he shall be sworn before one of them; they shall certify the amount allowed, and no further sum shall be paid. The clerk, except in Cumberland county, shall cause a copy of such account to be published in a newspaper printed in the county, if any, and return such printed copy to the secretary of state by the first day of January in each year.

Penalty for over-charging, and how collected. R.S., c.78, § 20.

SEC. 23. If a commissioner charges in his account any miles not actually travelled, or time not spent, he forfeits ten dollars for every such charge, to be recovered in an action of debt in the name of the county, half to the complainant and half to the county.

CUMBERLAND COUNTY.

Annual financial report shall be published. R.S., c.78, § 21.

SEC. 24. At the end of each year, the commissioners of Cumberland county shall make a statement of its financial condition, showing in detail, all moneys received into and paid out of its treasury, and such other facts and statistics, as may be necessary to exhibit the true state of its finances; and publish in pamphlet form, a reasonable number of copies for distribution among the citizens thereof.

CHAPTER 79.

CLERKS OF COURTS. COUNTY ATTORNEYS, AND ATTORNEYS AT LAW.

CLERKS OF THE JUDICIAL COURTS.

- SEC. 1.** Clerks of courts, their election, tenure of office, and duties.
2. Shall be sworn and give bond to the State.
 3. Shall keep account of moneys received for services, and pay balance to county treasurer annually; other moneys shall be paid in thirty days, or bond shall be sued.
 4. Shall receive and give discharges for fines and costs voluntarily paid.
 5. Copies of law cases in which State is a party, furnished attorney general.
 6. Shall complete records of deceased clerk; valid, when approved by court.
 7. To record lists of justices; copies are evidence. Also discharges of soldiers and seamen; copies, when evidence. Fees.
 8. Penalty for taking more than legal fees.
 9. Clerk may appoint sworn deputy, to be paid by him, and for whom he is responsible. Deputy's oath and bond.

- SEC. 10. Court may appoint clerk pro tem. in absence of clerk; his oath and bond.
11. Clerks to make extended records in certain civil cases; brief, in others.
12. Extended records in indictments for felonies. In misdemeanors, brief record. In criminal appeals, record, how made.
13. Records shall be examined, and if deficient, shall be made or corrected.
14. Disposal of money collected by suit on clerk's bond.
15. No clerk, register or recording officer shall be attorney or commence suits in his own court.

COUNTY ATTORNEYS.

- SEC. 16. County attorneys, their election and tenure of office. Only residents, eligible. Removal from county vacates the office.
17. He shall attend all criminal terms of court in his county; and the law court, in the absence of the attorney general; and act with him in law court.
18. He shall enforce collection of fines and costs, by officers; and annually move county commissioners for examination of officers' bonds. Penalty for neglect, how recovered.
19. Shall make annual report to attorney general of the business of his office. Penalty for neglect, and how collected.
20. When he is absent from a term, court shall appoint one pro tempore, and his pay shall be deducted from county attorney's salary.
21. Under same restrictions and obligations as attorney general.
22. Attorney of Cumberland county may appoint assistant, with approval of justice of superior court. His oath, duties, tenure and pay.

ATTORNEYS AT LAW.

- SEC. 23. Qualifications for admission to the bar.
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SUMMARY PROCEEDINGS FOR PAYMENT OF MONEY COLLECTED.

- SEC. 27. Proceedings on motion, if attorney fails to pay over money collected.
28. Motion shall be taken as confessed, unless sworn answer is filed.
29. Either party may except.
30. If attorney does not perform decree, he shall be imprisoned.
31. Claimant may sue at common law; attorney cannot cite to disclose until he has been in jail ninety days.

REMOVAL OF UNWORTHY ATTORNEYS.

- SEC. 32. When a justice of the supreme court may issue rule against an attorney. Service and return.
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34. Otherwise, judgment by confession.
35. Judgment final, unless appealed from within one week.
36. Appeal, how heard and decided. Appeal may be entered by prosecution, if respondent fails.
37. Prosecution, by whom to be conducted. Witnesses and costs.
38. Construction of six preceding sections.
39. Penalty for falsely advertising or representing one's-self an attorney.
40. Parties may manage their causes, and employ not exceeding two counsel, or any moral person by power of attorney; but persons disbarred for misconduct cannot appear for any party, and are ineligible as magistrates.

CLERKS OF THE JUDICIAL COURTS.

- SEC. 1. Clerks of the judicial courts shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners by chapter seventy-eight, but they shall hold their offices for four years.

- SEC. 2. Before entering upon the discharge of official duty, each

Clerks, how
elected.
—vacancies,
how filled.
1880, c. 239,
§ 36.
See c. 78,
§§ 1-5.
—term.
To be sworn,

CHAP. 79. clerk shall be sworn and give a bond to the State, to be lodged in the office of its treasurer, approved by the governor and council, in the sum of eight thousand dollars, with two or more sureties, conditioned that he will faithfully perform all the duties of his office, pay over all moneys, and safely keep and immediately deliver all records, files, papers, muni-ments in said office, and property of the county, as required by law.

To keep account of moneys received for services, and pay balance to county treasurer, annually; other moneys to be paid in thirty days, or bond sued. R.S., c. 79, § 3. 1879, c. 150, § 5. See c. 115, § 5.

SEC. 3. He shall keep a true and exact account of all moneys which he receives, or is entitled to receive, for services by virtue of his office, and on the first Wednesday of each January, render to the county treasurer under oath, a true account thereof, specifying the items, and after deducting his salary and the amount allowed him for clerk hire, pay the residue, if any, to said treasurer for the use of the county; but all other moneys belonging to the county shall be paid in thirty days after they are received by him; and if, in either case he neglects to do so, he shall pay twenty-five per cent. interest thereon until paid; and the county treasurer shall notify the treasurer of state of any such known delinquency, and the clerk's bond shall then be sued.

Receive and discharge fines and costs voluntarily paid. R.S., c. 79, § 4.

SEC. 4. He shall receive all fines, forfeitures, and bills of costs, imposed or accruing to the use of State, when paid or tendered to him before a precept is issued to enforce collection; give discharges therefor and enter them of record.

Copies of law cases in which state is a party, to be furnished by him to attorney general. R.S., c. 79, § 5.

SEC. 5. He shall furnish to the attorney general full copies of all cases described in section forty-two of chapter seventy-seven, in which the State is a party, thirty days before the session of the law court for that district. When the papers in such cases are not filed more than thirty days before such session, they shall be furnished immediately after they are filed.

To complete records of deceased clerk; valid, on approval. R.S., c. 79, § 6. 60 Me., 429.

SEC. 6. Under direction of the supreme judicial court, he shall complete unfinished records of a former clerk deceased, when from entries on the dockets and papers on file it sufficiently appears what judgment was rendered. Such record, when approved by the court, is valid.

He shall record lists of justices; copies are evidence. —also discharges of soldiers and seamen; copies, evidence, when originals are lost. R.S., c. 79, § 7. 60 Me., 429. See c. 81, § 69. —his fees. —state paper to be filed. Resolve of 1848, c. 112.

SEC. 7. He shall record the list of magistrates furnished by the secretary of state, in a suitable book; and such record, and also copies thereof duly attested by him, are legal, but not conclusive evidence of the due appointment and qualification of all such officers. He shall also record in a book kept for that purpose, properly indexed, certificates of discharge of soldiers and seamen from the army and navy of the United States, for which he is entitled to twenty-five cents each; certified copies from such record, when the originals are lost, shall be evidence in court, and in the absence of other proof, have the same effect as the originals, and only twenty-five cents shall be allowed for such copy. He shall preserve, and file, for public inspection, all copies of the state paper forwarded to him by the publisher thereof, as required by law.

Penalty for taking illegal fees. R.S., c. 79, § 8.

SEC. 8. A clerk, who exacts or receives more than his lawful fees, forfeits fifty dollars, to be recovered in an action of debt by the prosecutor, or by indictment, half to the prosecutor and half to the State.

Deputy clerk. 1874, c. 249, § 1.

SEC. 9. Any clerk may appoint a deputy to be paid out of the clerk's salary, for all whose official acts the clerk is responsible. Before

entering upon his official duties, such deputy shall be sworn and give bond to the clerk, approved by the county commissioners and lodged in the office of the county treasurer, in the sum of eight thousand dollars, with two or more sureties, conditioned that he will faithfully perform all the duties required of clerks of courts. Whenever the clerk is unable to perform the duties of his office, said deputy shall have all the powers and perform all the duties of clerk, and be subject to the same penalties for any neglect thereof.

SEC. 10. When a clerk is absent or the office is vacant, and an existing or immediate session of the court renders it necessary, the court may appoint a clerk to supply the vacancy, until an appointment is made by the governor and council, or during such absence; who shall be sworn, and give such bond as the court orders.

SEC. 11. Clerks shall, without unreasonable delay after the rendition of final judgment, make extended records of proceedings in court, in all cases contested by an issue joined before the court or jury, in actions of flowage, cases in equity, real actions, libels for divorce, petitions for partition, petitions to enforce liens, and actions upon mortgages. In all other civil cases, it is sufficient to record the names of the parties, date of writ, the term of the court at which it was entered, date of service or notice to defendants, the time of rendition of judgment, its nature and amount, and the number of the case upon the docket at the judgment term, but upon motion of either party, the court may, if special cause is shown, order a full record in any case.

SEC. 12. In indictments for felonies, clerks shall make extended records of the process, proceedings, judgment and sentence. In other indictments, it is sufficient to record the title of the case, the nature of the indictment, the term when it was found, the proceedings in brief thereon, and the judgment and sentence of the court. In criminal prosecutions brought up by appeal from inferior courts, it is sufficient to record the title of the case, the nature and date of the complaint, the name and official character of the magistrate before whom the case was tried, and the sentence appealed from and its date; to be followed by correct minutes of the proceedings and judgment in the appellate court.

SEC. 13. The supreme judicial court shall cause the records of each clerk to be examined at least as often as there is a change of clerk, and when found deficient, direct them to be immediately made or corrected, and when such order is not obeyed, the fact of such deficiency shall be certified to the treasurer of state, who shall cause the clerk's bond to be sued.

SEC. 14. The money recovered in such suit shall be applied, under direction of the court, to complete the deficient records. If more than sufficient, the balance inures to the State. If not sufficient, the balance may be recovered by the treasurer of state in an action on the case founded on the bond and facts.

SEC. 15. No clerk, register or recording officer of any court of the state, shall be attorney or counsellor in any suit or matter pending in such court; neither shall he commence actions to be entered therein.

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—oath and bond of deputy clerk. 1874, c. 249, § 2.

—his powers and duties. 1874, c. 249, § 3.

Court may appoint a clerk pro tem. in absence of clerk; oath and bond. R.S., c. 79, § 9.

Clerks shall make extended records in certain cases. 1881, c. 35, § 1.

—brief records in other civil cases.

Extended records in indictments for felonies. 1877, c. 211.
—in misdemeanors, brief record.
—in criminal appeals, record, how made.

Records shall be examined, and when found deficient, made or corrected. R.S., c. 79, § 10.
60 Me., 429.
70 Me., 432.

Disposal of money collected by suit on clerk's bond. R.S., c. 79, § 11.

No clerk, register or recorder to be attorney or sue in his own court. 1879, c. 128.

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COUNTY ATTORNEYS.

County attorneys, how elected; vacancies, how filled. 1880, c. 239, § 37. See c. 78, §§ 1-5. 71 Me., 384.

To attend criminal terms in his county: and the law court of his district, in the absence of the attorney general. R.S., c. 79, § 13. 67 Me., 129. —to act with him in the law court. 1878, c. 65.

To enforce collection of fines and costs by officers; and annually move county commissioners for an examination of officers' bonds. R.S., c. 79, § 14. See c. 80, § 3. —penalty for neglect, how recovered.

To make annual report to attorney general of the business of his office. R.S., c. 79, § 15. —penalty for neglect, how collected.

If absent from a criminal term, court to appoint pro tem. and pay deducted from his salary. R.S., c. 79, § 16. 67 Me., 129.

Under same restrictions and obligations as att'y gen'l. R.S., c. 79, § 17.

Assistant county attorney for Cumberland county. 1873, c. 117. —oath of office. —duties. —shall act as counsel for

SEC. 16. County attorneys shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners by chapter seventy-eight, but they shall hold office for two years. None but a permanent resident of the county shall hold such office, and removal therefrom vacates the office.

SEC. 17. The county attorney shall attend all criminal terms held in his county, and act for the State in all cases in which the State or county is a party or interested, and in the absence of the attorney general from a term in the county or district, shall perform his duties in state cases under directions from him in the county, and coming from the county to the district; he shall appear and act for the State with the attorney general, in the law court of his district, in all state cases coming into said court from his county; but no additional compensation shall accrue to the county attorney by the discharge of such duties.

SEC. 18. He shall enforce the collection and payment to the county treasurer, of all fines, forfeitures, and costs, accruing to the State, and the faithful performance of their duties by sheriffs, coroners, and constables, and give information to the court of their defaults in this respect; and shall annually move the county commissioners, at their meeting next following the third Tuesday of June, to examine and consider the sufficiency of the sheriff's and coroners' bonds. If he neglects either of said duties, he forfeits to the State not more than a hundred dollars, to be recovered in an action of debt, in the name of the treasurer of state.

SEC. 19. He shall, annually, by the twentieth day of November, make such a report to the attorney general of the business done in his office during the year ending on the first day of said November as is required by section fifty-seven of chapter seventy-seven, and failing to do so, he forfeits one half of his salary for the current quarter, to be deducted by the governor and council in drawing his salary warrant, unless they are satisfied that there was reasonable cause therefor.

SEC. 20. When he does not attend a criminal session, or the office is vacant, the court may appoint an attorney to perform his duties during the session, and allow him a reasonable compensation, to be paid from the county treasury, and charged to the State as bills of costs are in criminal cases, and the justice shall notify the treasurer of state who shall deduct the same from the salary of such county attorney.

SEC. 21. He is under the same restrictions as to fees, and the same obligations as to witnesses as are imposed on the attorney general, by sections fifty-six and fifty-eight of chapter seventy-seven.

SEC. 22. The county attorney of the county of Cumberland may appoint an assistant, to be approved by the justice of the superior court for said county. Said assistant shall take the oath prescribed for county attorneys; and assist the county attorney in the ordinary duties of his office, in the drawing of indictments, in the hearing of complaints before the grand jury, and in the preparation and trial of criminal causes. He shall, when directed by the county attorney, act as counsel for the State

in the trial of complaints, before judges of municipal and police courts and trial justices.

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state when directed.
See c. 115, § 2.

ATTORNEYS AT LAW.

SEC. 23. No person who has not been a member of the bar of another state, in good standing and in active practice, for at least three years, shall be admitted to practice law in the courts of the state, unless he has studied for at least two years in the office of some attorney at law, or a part of the time in such office, and the remainder in some law school, and has also passed a satisfactory examination in his legal studies.

Qualifications for admission to the bar.
1881, c. 62, § 1.

SEC. 24. All examinations shall be public, and in the presence of some justice of the supreme judicial court during term time. The time for holding the same in each county, not exceeding twice in each year, shall be fixed by the chief justice. The examination shall be partly oral and partly written, and be conducted by an examining committee of the bar, in each county, to be appointed by the chief justice. No candidate shall be admitted whose examination or character is not satisfactory to the presiding justice, nor unless notice of the intended application is given in some newspaper, by the clerk of the court to which application is made, for thirty days at least before such admission. Every candidate must present to the examining committee, a written recommendation from the member of the bar with whom he has studied, and must pay all fees prescribed by law.

Examination must be public, before a justice of the supreme court.
1881, c. 62, § 2.

—admission of candidates.

—recommendation and fees.
See c. 114, § 2.

SEC. 25. Upon admission to the bar, he shall, in open court, take and subscribe an oath to support the constitution of the United States, and also take the following oath:

Attorney's oath.
R.S., c. 79, § 18.
1881, c. 62, § 2.
See c. 122, § 12.
64 Me., 145, 150.
—form of oath.

“You solemnly swear, that you will do no falsehood, nor consent to the doing of any in court, and that if you know of an intention to commit any, you will give knowledge thereof to the justices of the court or some of them, that it may be prevented; you will not, wittingly or willingly, promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same; that you will delay no man for lucre or malice, but will conduct yourself in the office of an attorney within the courts, according to the best of your knowledge and discretion, and with all good fidelity, as well to the courts, as to your clients. So help you God.”

SEC. 26. No person commencing practice as an attorney or counselor at law in any other state or place, or in any court in this state, without the qualifications, oaths, and payment of the duty aforesaid, is entitled to demand or recover any remuneration for his professional services rendered in this state.

Person not admitted, cannot recover pay for services.
R.S., c. 79, § 20.
63 Me., 183.
See c. 114, § 2.

SUMMARY PROCEEDINGS FOR PAYMENT OF MONEY COLLECTED.

SEC. 27. If an attorney at law receives money or any valuable thing on a claim left with him for collection or settlement, and fails to account for and pay over the same to the claimant for ten days after demand, he is guilty of a breach of duty as an attorney; and such claimant may file in court in the county where such attorney resides, a motion in writing, under oath, setting forth the facts; and thereupon the court

If attorney fails to pay over money collected, court, on written motion under oath, shall cite him to show cause,

CHAP. 79. shall issue a rule, requiring the attorney to appear on a day fixed and to be served five days before hearing. R.S., c. 79, § 21. show cause why he should not so account and pay, and to abide the order of court in the premises; which shall be served by copy in hand at least five days before the return day.

To file sworn answer; if he does not, motion shall be taken as confessed. R.S., c. 79, § 22.

SEC. 28. If he then appears, he shall file an answer to such motion, under oath, and the court may examine the parties and other evidence pertinent thereto. If he does not appear and answer, the facts set forth in the motion shall be taken as confessed; and in either case, the court shall render such decree as equity requires.

Either party may except. R.S., c. 79, § 23.

SEC. 29. Either party may allege exceptions to any ruling or decree of the court; and they shall be allowed, unless deemed frivolous.

Not performing decree, shall be imprisoned. R.S., c. 79, § 24.

SEC. 30. If the attorney does not perform the decree of the court, he shall be committed for contempt until he does, or is otherwise lawfully discharged; and his name shall be struck from the roll of attorneys.

Claimant may sue at common law; debtor shall not cite to disclose until in jail ninety days. R.S., c. 79, § 25.

SEC. 31. The claimant may have his suit at common law against such attorney before filing such motion, or after an adverse decision thereon; and if judgment is recovered against the attorney in either mode, the fact shall be noted on the margin of the execution issued thereon; and when the debtor is arrested thereon, he shall be committed to jail, and no citation to disclose shall be issued until he has been there for ninety days.

REMOVAL OF UNWORTHY ATTORNEYS.

Information may be filed in clerk's office by attorney general or committee of bar against any attorney. 1879, c. 138, § 1.

—justice to issue rule on attorney to appear on day fixed, and show cause why his name should not be struck from roll.

—service. —where returnable.

Attorney filing denial of charges, information shall stand upon docket for hearing at next term. 1879, c. 138, § 2. —evidence.

Attorney failing to file his denial, facts taken as confessed. 1879, c. 138, § 3. —if acts are confessed, or

SEC. 32. Whenever an information is filed in the clerk's office of the supreme judicial court in any county, by the attorney general, or by a committee of the bar of such county, charging that an attorney at law has become and is disqualified for the office of attorney and counsellor at law, for reasons specified in the information, any justice of said court, in term time or in vacation, may, in the name of the State, issue a rule requiring the attorney informed against, to appear on a day fixed, to show cause why his name should not be struck from the roll of attorneys, which rule, with an attested copy of the information, shall be served upon such attorney in such manner as the justice directs, at least fourteen days before the return day, and shall be made returnable, either in the county where such attorney resides or where it is charged that the misconduct was committed. (a)

SEC. 33. If the attorney on whom such service has been made, on or before said return day, files in the clerk's office of said court in said county of return, a denial of the charges specified in the information, the information shall thereupon stand upon the docket of said court, for hearing at the next term thereof in said county, by the justice presiding, upon such lawful evidence as may be produced either by the State or by the respondent.

SEC. 34. If such attorney fails to file his denial as aforesaid, the facts set forth in the information shall be taken as confessed, and if the justice presiding finds that the facts so confessed are sufficient to disqualify the respondent from holding the office of attorney and counsellor at law, or if, in case of denial, the justice upon hearing finds that any of

(a) 64 Me., 146.

the charges specified are true and that the acts proved are sufficient to disqualify the respondent as aforesaid, he shall give judgment accordingly, and shall enter a decree that the respondent be removed from the office of attorney and counsellor at law in all the courts of the state and that his name be struck from the roll of attorneys.

SEC. 35. The judgment of such justice shall be final unless the respondent within one week, and before the adjournment of said term, files his appeal therefrom to the law court by entering his claim therefor upon the docket.

SEC. 36. Such appeal shall be heard upon printed copies of the case furnished by the respondent at the next law term held within the district. If the case is not argued, it shall be decided upon the record, and if the respondent fails to enter his appeal with the printed copies of the case during the first three days of said law term, the counsel for the prosecution shall enter the appeal with an attested copy of the judgment and decree, whereupon the same shall be affirmed by the law court.

SEC. 37. The prosecution shall be conducted by the county attorney for the county where the rule is returnable, unless the justice issuing the rule appoints some other suitable counsel to perform said duty. Compulsory process shall issue to compel the attendance of witnesses, and in case of decree of removal, judgment shall be rendered in behalf of the State against the respondent for full costs to be taxed by the court.

SEC. 38. The six preceding sections do not annul or restrict any authority hitherto possessed or exercised by the courts over attorneys.

SEC. 39. If any person who has not been admitted to practice law in this state, or whose name has been struck from the roll of attorneys, advertises as, or represents himself to be an attorney or counsellor at law, he shall be fined not exceeding five hundred dollars, or imprisoned not more than three months.

SEC. 40. Parties may plead and manage their own causes in court or do so by the aid of such counsel, not exceeding two on a side, as they see fit to employ; or by any citizen of good moral character who produces in court a letter of attorney for that purpose; but no person whose name has been struck from the roll of attorneys for misconduct shall plead or manage causes in court under a power of attorney for any other party, or be eligible for appointment as a trial justice, justice of the peace, or justice of the peace and quorum.

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proved are sufficient to disqualify, name struck from rolls. 64 Me., 145.

Judgment is final unless appealed from within one week. 1879, c.138, § 4.

Appeal, how to be heard. 1879, c.138, § 5. See c. 77, § 53.

—respondent, failing to enter appeal, counsel for prosecution shall enter it.

Who shall conduct prosecution. 1879, c.138, § 6.

—witnesses.

—judgment.

—costs.

Construction of foregoing. 1879, c.138, § 7.

Penalty for falsely advertising or representing himself to be an attorney or counsellor. 1881, c. 62, § 3.

Parties may manage their own causes, or employ two counsel, or any moral person by power of attorney. R.S., c. 79, § 19. 1881, c. 62, § 3. 33 Me., 358. 36 Me., 339. 72 Me., 411.